IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 602 OF 2005

Mr. Suresh N. Talwar ...Petitioner

Versus

State of Maharashtra & Anr ...Respondents

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Mr. Shirish Gupte with Ms. Kshama i/b Crawford Baylay & Co. Advocate for Petitioner

Mr. Rohit Shetty, Adv. for Respondent No.2.

Mr. R.S.Khadapkar, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 13TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner i.e. original accused, the learned advocate for the respondent No.2 i.e. original complainant and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 1524 of 2002 which is pending in the Court of learned J.M.F.C. at Vadgaon, Mavel, Pune. In the said case, process has been issued against the petitioner under Section 138 r.w. 141 of Negotiable Instruments Act.

3. It may be stated here that, the applicant had preferred an application before the learned Magistrate for quashing of process. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal reported in (2004) 7 SCC 338,** the learned Magistrate rejected the application for recall of process. In view of the decision of the Apex Court in the case of Adalat Prasad (supra), it is clear that the Magistrate has no power to recall the process, hence, no fault can be found with the order of the learned Magistrate rejecting application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period

of six weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of six weeks from today. The learned advocate for the respondent No.2 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge, if the revision is preferred within a period of six weeks from today.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of order of the Magistrate rejecting the application for recall of process.

7. Writ Petition is disposed of.

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